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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/979,569	11/19/2001	Alan Anthony Wilson	PG3707USW	3282

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EXAMINER
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HARMON, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/979,569

Applicant(s)

WILSON ET AL.

Examiner

Christopher R. Harmon

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-21, 24, 25, 27, 28 and 37-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-21, 24, 25, 27, 28 and 37-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/8/06 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 6-17, 27-28, 37-38, and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 3,718,164) in view of Applicant's Admitted Prior Art (AAPA).

Stewart discloses a method for filling containers with a measured powder comprising providing perforated plate 10 with first (top) and second (bottom) sides; perforations 11 with first and second openings (top and bottom respectively); closing off the perforation by use of a blanking plate at the second opening by closing member 12; directing powder onto closing member 12 by first leveler blade 23 on a sweeping path;

transferring the contents of the perforations to containers 31; see figures 2-4. The first leveler blade 23 is non-contactingly spaced from the first (top) side of perforated plate 10 however is not configured to present a forward acute angle to the sweeping path.

Regarding the AAPA relied upon, the configuration (curved and/or flat tail section) of the leveler blade was deemed to be well known in the art and an admitted obvious design choice to one of ordinary skill in the art due to the previous failure to traverse the common knowledge modification in the rejection of 2/9/04; see also final rejection of 11/12/04 and response of 9/29/05. Therefore, the limitation of a leveler blade presenting a (or multiple) forward acute angle(s) is considered AAPA.

Regarding claim 6, the diameter of the perforation is not specified however given the conventional size of a pharmaceutical product the range between 1.5 and 15 mm is considered either within the disclosure of Stewart and/or obvious to one of ordinary skill in the art.

Regarding claim 14, leveler blade 23 performs plural (reciprocating) movements.

Regarding claims 16-17, the depth of layer of powder is not specifically disclosed however given the conventional size of a pharmaceutical product the depth between 3 and 20 mm is considered either within the disclosure of Stewart and/or obvious to one of ordinary skill in the art.

Regarding claims 27-28 and 37-38, leveling/directing and transferring the powder are operations performed continuously and repeated. The perforations are reopened allowing for transfer of powder into/out of perforations into blister packet/blind cavity containers 31 below.

Regarding claims 9 and 41, Official Notice was previously taken making a common knowledge modification stating that a forward acute angle of 5-25 degrees of a leveler and/or the packaging of a medicament/powder selected from the group of claim 41 were old and well known in the art. The applicant's traversal in the response of 9/29/05 (page 12) is inadequate. Merely stating the aforementioned Official Notice is traversed does not clearly point out the supposed errors in why the desired forward angle is not well known. Conventional angled levelers (as taught by Vaughn) come in various positions. Applicant also failed to point out why any of the medicaments or powders listed in claim 41 are unknown to be used a leveling/dispensing process. The medicaments themselves are well known provided to consumers in capsules, blister pockets, etc. by filling perforated plates; see also Velasquez et al. (US 5,192,548). The above mentioned common knowledge modifications are considered admitted prior art.

4. Claims 1-2, 7-9, 24-25, 27-28, 37-39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 3,718,164) in view of Vaughn (US 2,365,920).

Vaughn however teaches leveling a powder over perforated plate 56 with leveler/wiper blade 68 configured to provide a forward acute angle to the sweeping path; see figure 10. It would have been obvious to one of ordinary skill in the art to configure the first leveler blade 23 at an acute forward angle as taught by Vaughn in order to displace the powder evenly. Regarding claim 8, the forward acute angle of the leveler/wiper of Vaughn is considered between 1 and 60 degrees. Regarding claims 24-25, Vaughn removes excess powder into box/container 43 subsequently to filling

Art Unit: 3721

perforations. Vaughn also discloses applying a lid to the filled containers; see column 3, lines 38-43.

5. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 3,718,164) in view of Morris (US 4,850,259).

Stewart does not disclose multiple leveler blades at different levels, however Morris teaches a powder dosing apparatus with multiple leveler blades 22 and 23 at separate depths movable across the surface of powder; figures 2-3. The following blade is a lower depth and relative depths change with the change of direction by means of pneumatic cylinders 22'-24'. The relative positions of the first leveler blade 22 and a subsequent blade 23 of Morris are from 0-12 mm (see column 3, lines 55+ ie. depth of layer 4 at 12 mm). It would have been obvious to one of ordinary skill in the art to use the teachings of Morris in the modified invention to Stewart in order to level the powder over the perforated plate.

Regarding claim 21, it would have been obvious to one of ordinary skill in the art at the time the invention was made to position the first leveler blade 1 to 3 mm from the subsequent blade since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

6. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 3,718,164) in view of Applicant's Admitted Prior Art (AAPA) as applied to

claims 1-2, 6-17, 27-28, 37-38, and 40-41 above, and further in view of Yamamoto et al. (US 4,731,979).

Stewart does not directly disclose the use of blanking pins for closing off the perforations and controlling the volume however Yamamoto disclose perforated plate 103 with perforations 103a with movable blanking pins 132 operating to close off the bottom opening and thereby adjusting the amount of powder filled into perforation 103a; see figures 24a-h. It would have been obvious to one of ordinary skill in the art to use movable blanking pins as taught by Yamamoto in the invention to Stewart in order to close off the perforations. Note that Stewart discloses "A variety of means can be provided for alternately opening and closing the lower extremity of the dispensing apertures" (column 3, lines 34-36).

### ***Response to Arguments***

7. Applicant's arguments filed 6/8/06 have been fully considered but they are not persuasive. The arguments presented traversing the common knowledge modification are not timely filed; see MPEP 2144.03.


Note that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Furthermore, note that Vaughn teaches leveler 68, Morris levelers 22, 23, with forward acute angles.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Chris Harmon  
Patent Examiner